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Cleveland-Marshall College of Law

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The Legislature Ponders Capital Punishment: Again

Vol. 27, No. 4

December 7, 1978

THE GAVEL

Cleveland-Marshall College of Law



COMMENTARY

A law student's opinion of the death penalty is likely to be influenced by the opinion of his/her criminal law professor on the matter. Mine favored its abolition. I respectfully dissent.

As all should be known by now, four theories have been advanced the basis for punishment under the criminal law: rehabilitation, retribution, restraint and deterrence.

When speaking of the death penalty, we are obviously not concerned with rehabilitation. There is also a debatable question as to whether deterrence is any longer a viable theory.

That leaves us then with the ultimate question: Is society justified in taking the life of one who has unjustifiably taken the life of another?

I would answer that society is not only justified, but that it has a duty to do so. Murder is the most heinous of all crimes; it is worthy of society's utmost condemnation.

The only persons subject to the death penalty are those convicted of first-degree or felony murder—although it should be noted that the bill currently pending before the Ohio Senate is still unresolved as to the application of the death penalty to felony murder. This leaves an elite group determined by a jury to be an element absolutely unfit for commixture within society.

There is fear that an innocent man may suffer this fate. Admittedly, death is irreversible. The criminal trial system is fallible. But a convicted killer is given every chance and appeal available. In Ohio, there is automatic review of any case in which the death penalty is assessed.



Lobbyists with opposing views debated the merits of the death penalty at the Judiciary committee hearings in Columbus.

Capital Punishment: Pro and Con

It is frequently alleged that the death penalty is selectively enforced—that death row is populated by the poor and minorities. It is conveniently ignored that the victims of these killers are also frequently of poverty and minority status. If the problem is selective enforcement, then that is an abuse that should be corrected. You do no justice to anyone by doing away with the death penalty altogether.

It is fashionable to think that man has attained a degree of civilization in which sanction of the death penalty is offensive to our sensibilities. Is senseless killing not also offensive?

In the sober serene courtroom in which the killer stands trial, something is missing. That something is the horror and terror felt by the victim before he/she has been liberated of his/her vitality.

Why should the perpetrator of the crime get off any better than the victim?

Lawrence G. Sheehy

Why oppose the death penalty? Ask the fifty or more persons who chartered a bus to speak to their legislators and the Judiciary Committee during the recent hearings on the reimposition of capital punishment. This group, young, old, black, white, Catholic, Protestant, and Jew, were united in their opposition to the taking of a life for a life. The group had members who were involved in political activity for the first time in their life, as well as long time activists who spoke on behalf of various organizations: the Inter-church Council, the Catholic Coalition for Criminal Justice, the John Harlan Law Club, the NAACP, the Ohio Public Defenders, the National Conference of Black Lawyers and more.

Two women from Parma believed that one does not kill to stop killings. Ministers spoke of their religious convictions and their respect for life. All felt it did society

more harm to sanction the taking of life. They would agree with Mr. Justice Brennan that "the calculated killing of a human being by the State involves, by its very nature, a denial of the executed person's humanity."

Lawyers among them spoke of the constitutional defects in the current bill and in any death penalty statute. This bill currently imposes the death penalty retroactively to cover the time when it was not in effect. It places the burden on the defendant to prove mitigating factors, to disprove the presumption that once found guilty of murder with specs, execution is appropriate. They spoke of the abuses of discretion, and plea bargaining, which may allow the prosecutor to decide who will be tried for capital crimes and who may plead to lesser offenses, a situation which can lead to the greatest abuses in felony murder situations where an accessory can get death, while the principal serves his time. They spoke of the lottery system whereby the draw of the judge or the venue of the trial plays a greater part in the choice of penalty than the mitigating circumstances allowed by statute. The philosophy of the sentencing judge will be the unspoken criteria for the decision.

Others discussed the fallacies of the arguments of those promoting the death penalty as a deterrent. That theory is based upon the assumption that the act of murder is a rational process, with the person committing the crime fully realizing the consequences of his act. The reality is that the vast majority of homicides occur in family settings, in the context of

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THE GAVEL

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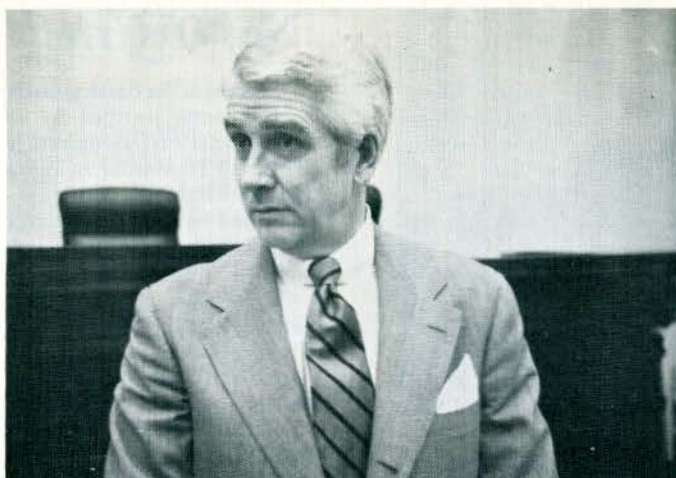
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If you had any doubts that the practice of law is becoming more and more specialized, Herald Price Fahringer would have convinced you. Mr. Fahringer, who recently spoke at C-M on First Amendment freedoms, is a member of a small cadre of attorneys whose primary practice consists of defending obscenity cases.

His presentation dealt with trial tactics and the problems that arise in these types of cases, along with a liberal sprinkling of quips and anecdotes. One problem over which the defense has no control is forum-shopping by the government. For example, the Postal Service ordered *Screw Magazine* in Kansas and indicted its publisher there, hoping for a conservative jury and tighter community standards.

"Careful jury selection is of the utmost importance," Fahringer said. "Formerly, the rule was don't take women in these types of cases. Now we find that young professional women are ideal jurors." When *voir dire* is permitted, he asks questions like: Do you go to church? Would your religion prevent you from viewing this material? On the other hand, prosecutors ask whether the prospective juror has ever visited an adult bookstore. He also asks some frank questions concerning the materials they may see at trial. Jurors whose responses place them at an undesirable end of the spectrum are challenged for cause by either side.

Once the jury is selected, Fahringer continues "to



Defending the Porno Boys

by Martin Nadorlik

desensitize them, to prepare them for the worst." While some defense lawyers waive opening statements, Fahringer considers them essential in the ongoing desensitizing process.

"Trial today reduces itself to a battle of the experts," Fahringer said. Since psychiatry is not an exact science, it is always possible for both sides to round up a parade of experts who hold opposing views. Many times, both sides will keep their list of experts a secret to hinder their opponent's ability to cross-examine on testimony given at former trials.

Fahringer also uses demonstrative evidence. He will blow up the least offensive pages of the publication in question, since the publication as a whole

must be obscene. He noted that the community standards test the Supreme Court announced in *Miller v. California* was a blow to defense lawyers. Under the former national standard, if a publication had been declared

not obscene in a California case, that result could be argued in a New York prosecution. Currently, the material must have serious literary, artistic, political or scientific value. This test along with the forum-shopping possibilities of federal prosecutions, has greatly limited defense counsel.

He has no qualms about his work, though he admits having defended some unsavory clients and unpleasant material. "My judgment is irrelevant," he stated in an interview with *Student Lawyer*. "In a free society you subscribe to the proposition that every individual should make his own choice as to what is amusing to him, or satisfying, or arousing." No matter what one's view is on this subject, the fact remains that Fahringer is very good at what he does. In that regard, if nothing else, he represents an ideal that all attorneys can emulate.

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A LETTER

Letter to the Editor:

The Gavel should learn about negative and positive strokes. We in the library have been working to try to make life easier for law students. One minor little improvement was new photocopiers. The new machines require every member of the library staff to fill, repair and keep the machines going. Service has been pretty good. For all of the work the library assumed

to try to improve our service, the Gavel kicked us. Thanks.
Anita Morse

• • •

Editor's Note

Dear Professor Morse:

You might want to peruse Bruce Walis' article on library services, which incidentally was conceptualized and written prior to the arrival of your letter.



The Legislature Ponders

When the State Legislature resumes its sessions next month, the issue of capital punishment will likely be on their agenda. Ohio has been without a capital punishment provision since July of this year when the previously enacted penalty was found to be unconstitutional by the U.S. Supreme Court. After that ruling, the House Judiciary Committee appointed a sub-committee to study the re-instatement of capital punishment.

The recommendations of the death penalty committee were embodied in Sub. H.B. No. 1321, introduced by Rep. Terry Tranter. Hearings were held on the bill by the full committee in August and November, but a vote of the committee was not taken before session adjourned for 1978. The bill will be re-introduced, most likely, this January.

The Judiciary Committee's composition will have changed by then. Two seats currently held by opponents of capital punishment, Reps. Arthur Brooks, and Ed Feighan, both of Cleveland, will be vacated on that committee. Brooks, who did not seek re-election, will be replaced in the House by Mary Boyles, and his judiciary committee seat will most likely go to her also.

Feighan's replacement, former city council member Benny Bonnano, is rumored to be uninterested in the Judiciary Committee as his assignment. It is unclear who will take over this spot, but one possibility remains

controversial Wayne Hayes, formerly one of the powerful figures in the U.S. Congress.

Since at the present time, neither proponents nor opponents can claim a clear majority on this issue, the appointments to this committee will have an impact, since a bill providing for a penalty for aggravated murder must be forwarded by the Judiciary to the House. After consideration by the House, the bill then moves to the Senate.

Alternatives to the death penalty have been proposed by those opposing capital punishment on moral, ethical, legal or political grounds. All basically have provisions for long term incarceration, with variations in the length of term to be served and/or provisions for parole.

One version calls for no parole whatsoever, with a life term of incarceration. Other life incarceration versions call for judicial review of the sentence after 25 years, and others follow the more familiar arrangement of parole board review after a term of years.

Sub. H.B. 1321 provided for either the death penalty or life imprisonment with no parole for aggravated murder with specifications. Where the crime was murder for hire or committed to facilitate organized crime, an additional fine may be imposed, unless the fine will be an "undue hardship" or will "prevent him from making reparation for the victim's wrongful death."

No Deterrent Says CSU Prof.

The use of the death penalty is frequently justified by its proponents as a necessary deterrent to murder or other capital crimes. Yet data collected by a CSU sociology professor indicates that such an assumption is false.

Dr. William C. Bailey has written a paper entitled, "The Deterrent Effect of the Death Penalty for Murder in Ohio: A Time Series Analysis." Dr. Bailey, currently on sabbatical leave at the Institute for Research on Poverty at the University of Wisconsin, received his doctoral degree from Washington State University and has published articles in numerous professional journals including *Journal of Criminal Law* and the *Law and Society Review*.

Dr. Bailey's research was presented to the Ohio House Judiciary Committee by his colleague from the sociology department, Gerald R. Deaver.

According to Prof. Deaver, "the majority of studies have found either that (1) homicide rates are higher and not lower in death penalty jurisdictions, or (2) no significant change in the level of homicides can be attributed to abolition or restoration of capital punishment."

However, these studies have been conducted on a national level and thus the relationship between certainty of executions and homicide rates for individual jurisdictions has been inadequately examined. Deaver points out that only the state of Ohio has been the focus of a single state analysis.

"The first study," Deaver told the House Committee, "was conducted by the Ohio Legislative Service Commission in 1961." That study examined the relationship between homicide rates and execution rates in Ohio for a period of 1909 to 1958. The results of that study showed that as executions increased, so did the rate of homicides. The Commission concluded that their analysis "reveals no evidence that executions have any discernable negative effect on homicide rates."

Deaver explained that Prof. Bailey's research attempts to correct some of the methodological errors in the Commission's study. He analyzed the relationship between the certainty of executions (the number of executions divided by the number of reported homicides) and the homicide rates for Ohio during the period of 1910 to 1962. He considered three models of the relationship between execution rates and homicide rates, and introduced selected socioeconomic factors into the study as controls. At each of the three stages, the deterrence theory was tested.

In his conclusion, Bailey stated, "the evidence for Ohio provides no support for the argument that the certainty of the death penalty provides for an effective deterrent to homicide. Rather, execution rates and homicide rates prove to be largely independent factors, with offense rates being a response to the demographic characteristics and socioeconomic conditions of the state."



Professor Deaver testifying before the Judiciary Committee.

The View at C-M

by Tom Johnson

In an age of "Starsky and Hutch" and murder in San Francisco and South America, the issue of capital punishment is constantly questioned.

"I think its effective—at least criminals will think before pulling the trigger," says second year student, Dennis Fisco. He feels that premeditated murder would be reduced if criminals thought they might die as a result of their crime. Fisco doesn't think murderers should be able to "use the emotions of others to get off." When asked what he would do if he were sentenced to die, Fisco replied, "I'd face the music." He feels that Ohio should reinstate Capital Punishment and work on making the penal system stronger, more rigid. He advocates fewer paroles and longer sentences.

Prof. Robert Willey disagrees; yet, he feels sure that Ohio will reinstate the death penalty after rewriting the statute. Willey claims the U.S. is one of the last countries to still use capital punishment, and we use it in a discriminating manner. "We reserve capital punishment

for unpopular groups—blacks and the poor. There is little or no sympathy for violent crime offenders."

Willey said studies have proven that the death penalty does not effect the crime rate. "With or without it we are still going to have violent crimes. Besides, the majority of violent crime offenders never repeat. Capital punishment only costs the taxpayer money."

A Missouri study done after W.W. II revealed that it costs more in trial and court hours and paperwork with appeals and stays than to lock up a criminal for life. Willey finds the debate over capital punishment unfortunate. It divides society and puts a tremendous strain on the system.

Prof. Richard Kuhns is even more liberal on the subject. Kuhns believes it is not a deterrent. It is also irreversible—final. He is against it. He also feels the system is too severe on criminals. Presently, "we lock away individuals in terrible, dehumanizing places for extended periods of time and then place them back into society hoping they will be

good citizens."

Second year student, Mike Fine, felt that "with certain qualifications a state or government should never be able to take one of its citizen's lives." Fine said he worked with murderers and they were not deterred by the threat of death. Prison was a worse fate to these criminals. Fine thinks we should spend more time educating people and strengthening police forces instead of killing our deviates.

With the Criminal Law exam only days away, many first year students were too busy to offer their opinions, but Amy Goldstein stated that the death penalty is inherently wrong. "It's wrong to kill somebody," she stated. "That's what the system is always telling us, then they turn around and put a criminal to death for his acts. Two wrongs don't make a right." The old common law idea of "an eye for an eye, a tooth for a tooth" is outdated. Society has come a long way. Our efforts should be spent trying find out the what and why of a criminal and not just kill them."

Goldstein feels paroles are given too easily. She thinks there should be stronger guidelines, better prisons and more human understanding. Perhaps, Prof. Kuhns had a point when he said, "You

should put yourself in the criminals' place, then take a good long look and see if you are in favor of capital punishment."

• • •

Professor Murad:

"Initially I was not in favor of the death penalty, but I have changed my mind because of the drastic increase in crime."

The rehabilitation theory has proven to be a failure and today the deterrent aspect is uppermost. I am not satisfied with the figures and reports that say it has not worked.

There should be a little more publicity with respect to the execution, in order to make the deterrent aspect work."

Professor Garlock:

"No, I'm personally opposed to it. My fundamental rationale? Well, there is always a second chance of reformation or rehabilitation. Also, there are problems with disproportionate use against minorities, as a practical matter."

"In addition, there is the chance that the person wasn't guilty, and that new evidence of innocence could be introduced. However the death penalty cuts off that possibility."

According to Carmen Marino, Assistant County Prosecutor and C-M graduate the general attitude among prosecutors at all levels is that the death penalty is a necessity.

"The main reason it should exist," he stated, "is retribution. It is a just punishment for a wrong done. 'The Supreme Court,' he noted, "has never ruled it cruel and unusual punishment. It has always ruled that for fairness, or lack of it, or discretion or lack of it, a statute is unconstitutional."

Marino stated that "the best that can be done in regards to setting down guidelines is to pass a statute that is fair and to rely on judges to implement it fairly and evenly across all segments of society. "In Lockett," he



Carmen Marino

A Prosecutor's View

explained, "the Court found that the statute did not give judges enough discretion, not allowing them to take enough information into considera-

tion before sentencing."

Marino believes that judges attempt to administer the law fairly, but said, "I don't know how much attitudes towards

the poor and minorities affect the implementation of the death penalty." He noted that some states, for example in the South, "have in the past enacted the death penalty for certain types of robbery and rape, possibly a result of such attitudes toward the poor, blacks in particular."

Marino gave the example of a case being tried now where the defendant, "at the time of the arrest, contemplated killing the arresting officer in order to escape. That type of situation arises quite often, especially where there is a pursuit, or a felon caught in the act.

"He has to decide at some time, if a police officer comes upon him, whether or not to fire, and that's a classic situation where the death penalty is a deterrent."

Mike O'Malley

David Douglass

Death Penalty

violent arguments, or drug or alcohol use.

Deterrence also relies on the premise that all those who commit murder will be executed, that the murderer will realize that his own death will be the result of his deed. In reality, fewer than 1% of the murders committed in the U.S. result in a conviction and a sentence of death.

Who are these 1%? For the most part, they are poor, and usually they are black. According to the National Conference of Black Lawyers, since 1930, 3,850 persons have been executed in the U.S. Of these, 2,066 or 54% were black. During these years, blacks comprised about one eleventh of our population. Of those executed for rape, 95% were black; for robbery, 76%; for assault, 83%; for burglary, 100%.

These figures reflect the grim reality of our criminal justice system. It is brutal and vindictive towards blacks and the poor, and based on inequalities present in our society. It does not punish for murder. It punishes for being uneducated. For having the 'wrong' color. For not having enough money. We can not continue to act this way.

Those who would reinstate the death penalty seek a simplistic solution to a complex problem. They want to protect themselves from senseless and irrational crimes, they want to isolate themselves from what is frightening and confusing in our world. They must recognize that state authorized violence will not cure society. Society must look at itself and discover the cause of crime, it must look at itself and discover why its response to crime fails. It must find, as Harvey Milk showed in the message he left for us, the power to understand, to forgive, and to act for a better world.

Why oppose the death penalty?

It will only add to the problem. It won't solve it.

Ask the ACLU, ask NCBL, ask the NAACP, ask your priest, your minister, your rabbi. Ask the 50 people on the bus. Ask yourself.

Mary J. Kilroy



The J. Patrick Browne Memorial Book Exchange

It occupies but three shelves in the browsing section of the library. In fact, if it wasn't for the gaudy decorative tape which effectively showcases its contents, it's doubtful that anyone would have taken notice of it. But the J. Patrick Browne Memorial Book Exchange has been in business since the beginning of the Fall Quarter, and it shows signs of life.

The Exchange is located in the common area on the main floor of the library, just east of the box seats which overlook the faculty parking lot.

Mortimer Adler has not yet expressed interest in the

current collection of the Exchange, but that should not discourage anyone. Admittedly, these are not "Great Books," but they are delightfully devoid of law.

And that is the purpose of the Exchange, according to its namesake, Professor Browne.

"The idea is not that the books should have any content," said Browne. "You just get tired of reading Torts and Contracts."

Browne, himself, is an avid reader of materials non-legal. He claims to read two or three novels a week. "I'd go home in the evening and couldn't stand the thought of reading

more law." And thus was the idea for the Book Exchange conceived.

The Exchange is an opportunity for anyone interested to partake of the offerings of Browne or others who have already participated. "It's not even an honor system," said Browne. "The idea is to take a book, read it, bring it back and maybe contribute something else."

Browne's interest is the mystery novel. He has stoked a few of these. Other tastes seem to be much more diverse. Among the selections currently available are the following: *Doris Day, Her Own Story*; *Ellery Queen Anthology*; *Till the End of Time* (standard Harlequin novel fare); and a Reader's Digest Condensed Book (1969 vintage).

There are also a few of higher quality. Among them:

Three Days of the Condor; Postern of Fate (Agatha Christie); and a little ditty with an intriguing title *Murder At the ABA*.

One more thing needs to be mentioned. The "Memorial" designation has led to some confusion. Browne borrowed a line from Twain in the hope of clarifying things. "The rumor of my death has been greatly exaggerated," he said.

by Lawrence G. Sheehy



WE'VE GOT TO DEPROGRAM JUNIOR—HE'S RUN OFF AND JOINED THE PRESBYTERIANS...

Five in, Babbit out

by Lee Andrews

The law school faculty approved promotion requests of six professors at the annual meetings on promotion and tenure. The requests of only five of the applicants, however, left the law school for further consideration by university officials.

In a recent interview with *The Gavel*, Dean Bogomolny said that the faculty recommended that Professors Babbit, Forte, Garlock and Landsman be granted tenure, and that Professors Barnhizer and Kuhns be granted the rank of full professor. Bogomolny said that Professor Babbit had asked to withdraw his application after learning from the Dean that he did not have the Dean's support.

Earlier, the faculty refused Professor Forte's additional request for full professorship, a decision Bogomolny interpreted as "hazing." Forte just began his third year of teaching at C-M.

The Dean said his decision not to support Mr. Babbit was difficult only because of his personal respect for the professor; it was not a "hard decision", he said, when Professor Babbit's performance was evaluated according to the Administration's criteria for promotion and tenure.

A memorandum outlining those standards places first priority on teaching. "A professor's primary responsibility is to teach his classes, currently, fully and thoughtfully prepared. Closely related is the professor's accessibility to students outside the classroom and his assistance in students academic work. The development of new course materials, whether or not published, is a most valuable contribution to the

teaching process and should be given appropriate credit."

Second priority was allotted to the professor's contributions to the growth and understanding of the law. Three types of work are listed as meeting the requirements of that category:

- academic research and publication
- field and empirical research, together with interpretation and analysis of the data materials developed, or
- constructive change in the law by legislative, judicial, or executive administrative means.

The memorandum states that none of the three forms of activity is superior to the others; a professor is asked to choose the types of activity which are "most significant, most effective, and best suited to his individual skills."

School, University, and professional activities are accorded third priority. Outside activities not included within category two are given fourth priority. The latter distinction, the memorandum states "may often be difficult to make."

Bogomolny said he believed that most professors have strong records in both the teaching and scholarship creative activity categories.

He said "hard choices" are required when a candidate for promotion is very strong in one area while weak in another: "A Prosser, who can't stand up in class." In such a case Bogomolny said he would overlook weaknesses as long as the candidate was "minimally competent" in the weaker area.

Bogomolny was asked if an outstanding teacher could be promoted on the basis of teaching performance alone. "It is conceivable, but I would have to push the application through the University." One professor was mentioned as capable of making it on teaching alone, but the Dean did not specify the attributes separating an "outstanding" teacher from a "good" one.

The Dean stated that Professor Babbit did not have a sufficient publishing record to warrant tenure at this time. Past student evaluations of Professor Babbit indicate that he is considered a very good teacher.

The student evaluations of Professor Kuhn's Criminal Law class a year ago indicate some dissatisfaction with his teaching method. The evaluations suggested that his use of the true Socratic method created too much confusion, and as a result was counterproductive. Dean

Bogomolny was asked why he did not wait until the recommendations of this Fall's Criminal Law class before approving Kuhn's promotion request. "He published an article in Yale Law Review, which ordinarily is reserved only to people from Harvard and Yale. I visited his Evidence class and found him to be an excellent teacher. The evaluations of students in his Criminal Procedure class were much better than those in his Criminal Law class...I had to consider his marketability."

Packets containing student and faculty evaluations of the professors still in contention for promotion are now in the hands of University Vice President John Flowers. Mr. Flowers reviews the applications of all University faculty recommended for promotion; in instances where the faculty and administration are in disagreement over a candidate, Flowers' staff will conduct an independent investigation into each professor's request.

Flowers is expected to make his recommendations to President Waetjen in mid-December. Mr. Waetjen, who has veto power, will present the recommendations to the regents at their January meeting.



The Marshall Fund Report

BY Lee Kravitz

The Cleveland Marshall Fund was authorized by the trustees of Cleveland State University. The fund basically comes from gifts and other monies accumulated during the years that Cleveland Marshall was a private university.

There are two basic components to the yearly budget, part for a visiting scholars program, and the other part for a research program in which faculty is paid for research in lieu of teaching. The grants also support student research assistance.

This year's budget for the visiting scholars program is \$12.5 thousand. The faculty research budget is \$14,000.

Each visiting scholar receives \$2,000 for a two day visit. The rest of the budget provides for luncheons, printing, travelling, etc.

There will be three visiting scholars this year, the first being Guido Galabresi, the John Thomas Smith Professor of Law at Yale Law School. He will be with us on January 18th and 19th. His numerous books have focused upon economics and the law of torts.

The second visitor shall be John Kaplan, the Jackson Eli Reynolds Professor of Stanford Law School. He will be with us on April 9th and 10th. Professor Kaplan's books and law review articles are concentrated in areas of criminal law and evidence. His books include *The Trial of Jack Ruby* and *Cases and Materials on Evidence*, a textbook known to most of us who take evidence at C-M.

The third visitor will be Clyde W. Summers, the Jefferson B. Fordham Professor of Law at the University of Pennsylvania. The date of his visit is May 9th

and 10th. Professor Summer's area of expertise is in the field of labor relations.

Each visiting scholar will give a lecture open to all at 5 p.m. on one of the days of his visit. The time is set to allow day and night students along with practicing attorneys to attend the lecture.

Professor David Goshien, chairperson of the Cleveland Marshall Fund Committee, admits attendance has been rather poor for lectures in the past, and is hoping for improvement this year. Signs will be posted advertising the lecture in hopes of spurring attendance. Professor Goshien also stated that there is a free keg of beer following the lecture allowing people to meet personally with the visiting scholar. He also hopes to arrange office hours for each visiting speaker so that students may seek the visitors out individually.

In addition to the lecture, each visiting scholar will teach a few classes in their area of expertise, attend one seminar arranged by students, attend two dinners with people in their field, and coffee hours and lunch with students and faculty.

The visiting scholars are brought here for exposure to students and faculty and to share with us their knowledge in their areas of expertise. Professor Goshien also feels that these visitors have a positive effect on our school's reputation. Also, the visiting scholars program provides C-M with contacts in other law schools. Notices concerning the visits are mailed to all law professors in the U.S. and to all members of the Cleveland Bar.



Presiding over the budget hearing were: foreground from left, Vice President Tom Lobe, procedure expert Tony Lavrisha. On the bench from left, Secretary Sue Edwards, President Bill McGinty, Treasurer Kurt Olsen.

The Budget Meeting Let's Make a Deal

By Scott Lee

It was "Let's Make a Deal" at the last SBA meeting Nov. 15th, and Tom Lobe and Jerry Walton ended up playing Monty Hall and gave away all the prizes. The meeting started off amicably enough as each contestant went to the podium and gave a five minute speech on why they needed the money.

It didn't take a mathematician to figure out that the groups wanted more money than the Senators had to dole out. The question: Who will take the cut?

There were 5 contestants: Jerry Walton of the ABA Law Student Division, (hereafter LSD) James Hewitt for the Black American Law Student Assoc. (BALSA), Dennis

Luttenauer for the National Lawyers Guild, (NLG) Tom Lobe for the SBA, and Ann Cofell for the Women's Law Caucus. The senators were to be the judges.

At first it appeared that the NLG and Womens Caucus would take most of the cuts, on the theory that the smaller the organization, the bigger the cut. BALSA member Leonard Tate protested that the solution was to get more money from the university. He went on to say that he was tired of the groups being the first in line to take cuts in the budget, with SBA getting all the money it wanted. With the battle lines drawn, with the SBA and the LSD on one

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COMPARABLE FRAMING AT COMPETITIVE PRICES

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side and the NLG, Balsa, and Womens Caucus on the other, Pres. McGinty presented his compromise proposal.

It was doomed to failure. McGinty's mishmash aggravated everyone and satisfied practically no one. It cut all of the groups' budgets, and made everyone unhappy. An attempt was made to pass the compromise budget intact. It failed. Margot Tilmon then started drilling Tom Lobe with questions on the cuts SBA was willing to make, and why SBA, with the biggest budget, had the fewest cuts. Opinions began spewing between groups, as each group tried to nit pick the other's budget. As senators began to drift out of the meeting, it became obvious that no budget would ever get passed if each person at the meeting kept complaining. A break was suggested for a few minutes while a compromise was hammered out.

While the senators filed out, the final "bargaining" went on between the different factions. Jerry Walton stated that he would be willing to give up \$155, so the NLG, Womens Caucus, and Balsa converged on Tom Lobe for some of SBA's money. He agreed to give up \$900 that had been earmarked for an IBM typewriter and study aids for the library. The groups then divided the money among themselves. Thus the budget was created. The senators were called back to rubber stamp the final draft. The meeting was adjourned.

Budget Meeting Another View

by Leonard Tate

This year's SBA budget hearing was another memorable affair. It was reminiscent of the '76 hearing, but more like U.S. politics with the "all for the people" rhetoric.

The SBA Administration seemed to be promoting the "new minimalism" syndrome, where progressive budgets are cut in favor of hardware programs, for the benefit of (who else?) "THE Majority".

It must be noted that Pres. McGinty, in a departure from the infamous ways of the old "gang of four," showed surprising class. He was tough, but not unreasonable, erratic, or polarizing.

As always, the student organizations (grossly misnamed as "special interests" by one or two antagonists) rose to the occasion, put their heads together, and worked out a compromise. There were still cutbacks. The majority got 2 new typewriters instead of three, and 3 copies of various study aids instead of four.

It is my contention, that with true student UNITY there would be no need for the hassles we go through each year dividing up smaller budgets from larger student

fees.

When students went to the library bosses about study aids, they were told that "those weren't the kinds of materials appropriate for the library."

Instead of questioning those answers and summoning more student support for these requests, the SBA apparently decided to turn tail and pay for the items "ourselves."

So we, as students, wound up taking the weight in the form of SBA budget conflicts and cuts. Shades of Proposition 13. With all of the inflation, budget crunches and austerity, shouldn't we drive a hard bargain when it comes to allocation of OUR fee money?

It certainly makes more sense to struggle as a unit for increased resources than to fight among ourselves. Yet we should all be proud of our minimizing conflict and maximizing compromise at that meeting. A few detractors wanted to see more conflict. They were disappointed. I wouldn't be surprised if a few people wouldn't try to represent that meeting as a four or five way struggle. It wasn't. The Women's Law Caucus, Balsa, the NLG, and the LSD/ABA all showed unity when it counted. We're a long way from complete unity, but with enlightened activism, hope is on the horizon.

• • •

Perform a death-defying act.

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Why is there always a secret singing
When a lawyer cashes in?
Why does a hearse horse snicker
Hauling a lawyer away?

Carl Sandburg

Faculty Views Change

by Paul Edwards

The Curriculum Committee is currently considering revision of the structure of the law school program. Changes being considered include reduction of the size of the first year classes, with a corresponding increase in the size of upper level classes.

Also under scrutiny is the number of first year classes being required, and a major reorganization of the legal research and small group legal writing components, as well as the problem of insufficient number of Institutes offered, alterations in the clinical program, and the structure of courses such as Business Associations and Remedies.

The overriding consideration is money. Chairperson Moody notes that faculty is understaffed, and "while a great deal more could be offered in the way of choice and quality for fifty dollars more, the students would be out there picketing."

Moody points to the extreme cost of clinical education, a problem that advocate Chief Justice Burger does not address. "Title II, which provides money for clinical legal education," she noted, "is only a drop in the bucket."

She believes the first year curriculum should be cut from 6 courses to 4. She sees Property, Con Law and Crim. Law being pushed to later times, with the possible addition of Administrative Law to the first year.

Committee member Anita Morse is concerned with legal writing and research. She envisions a program with the two components integrated, with students beginning with a legal problem at the client interview stage, and proceeding through the litigation process, including practice negotiations and appellate argument. She emphasized that existing small groups need not be eliminated, but

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Library Services Go Unused

by Bruce Walis

The library offers a number of services which are unknown to many of our students. The recently created microfilm and microfiche collection is one example. The collection includes, U.S. Supreme Court briefs and reports, U.S. legislative histories, Statutes at Large, Code of Federal Regulations, the Federal Register, S.E.C. legislative histories, Conference committee documents, as well as Ohio Supreme Court briefs and reports. Students doing appellate work may find the Supreme Court briefs and reports quite helpful. As a valuable short cut they can save time and conserve energy. The microfilm collection also

includes thirteen of the better law review titles and a number of other legal resources ranging from the United Nations section to the National Union Catalog. The microfilm room is amply equipped with readers and copiers. Patrons may copy the first twenty pages of microfilm material free of charge, any additional pages may be copied at the cost of five cents per page.

In an attempt to keep abreast with recent technological advances in the areas of legal research and instruction, the library has created its own audio-visual center. The audio-visual materials consist of video and audio cassettes, players, and headphones. At the reserve desk students may charge out Professor Lazurus' video tapes on such topics as the Best Evidence Rule, Judicial Notice, Impeachment of Witnesses and the like. The library staff has been trained to assist students in the operation of the video

players located on the first and second floors. The checkout procedure is quite simple. All that is required is a valid CSU ID card. A multiple hookup is also available whereby up to twelve students may monitor the same tape.

The library also provides a very extensive audio cassette collection. Students may charge out battery operated cassette recorders which may be taken from the library to record classes or speeches. The library contains over two-hundred tapes of the Association of American Law Schools. A brief survey of some of the topics reveals the extent and nature of the collection. The tapes include discussions of "Teaching Civil Procedure What is It?", "The Interaction of Law & Religion", "Remedies and Sanctions", "Tax Reform: The Ideal & the Practical", "Trial Advocacy", "Separation of Powers", to "Women in Legal Education." A

complete index to the entire collection is available at the reserve desk. These tapes are often supplemented by textual material as well. Also available for examination are Professor Miller's Contracts tapes on offers, acceptance, consideration, mistake, statute of frauds and the like.

The entire library staff is more than happy to assist students with any and all of these procedures. Desk personnel have been trained to operate all machines and are requested to familiarize themselves with the operation manuals.

Lawyers make a living out of trying to figure out what other lawyers have written.

Will Rogers

How in God's name could so many lawyers get involved in something like this?

John Dean

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Cleveland-Marshall's new full time placement director, Nancy S. Goldman, sees her job as a combination of counselling C-M students and public relations on their behalf

Goldman, who joined C-M Nov. 20th after 3 years as female placement counsellor for the Jewish Vocational Service plans "to spend 50% of my time counselling students on resumes, cover letters and how to present themselves and 50% of my time in field work, talking to firms, corporations, banks, judges, and governmental agencies.

"Eventually, I will have office hours, including one evening per week, but my door is open to students and alumni." Goldman recommends that students schedule interviews with her as well as explore possibilities on their own. "The more avenues you cover, the better; the more people who have your name, the better off you are."

She also warns students not to be discouraged by having too many unproductive interviews. "Each interview is better than the one before, and you learn from each one."

She expressed concern for the 90% of the students who are not in the top 10% of their class, and implied that these are the ones who need a placement person most. These students should stress "a unique quality that someone else does not have." It could be a marketable undergraduate major such as accounting or engineering, or volunteer activities, previous employment or hobbies.

"You may run into a potential employer with a similar bowling average," she said.

During her first full week as Placement Director, she met with the Placement Committee and found that students had many "legitimate complaints." In response to these, she intends to notify students when they have interviews scheduled, and plans to change the job board, job book procedures. "There must be a better way to keep them current and accessible to students, but I don't know it



Goldman Named Placement Director

by Gail Gianasi Natale

yet," she said.

But to expect any but the largest firms to interview on campus is "unrealistic. It is just too expensive for most firms."

She first plans to visit other law schools and then to develop contacts. "I don't know that I will be of much help to this year's graduates," she admitted, but she would "absolutely" be in a position to help the class of '80 to find permanent jobs.

Goldman, a Cleveland native with an A.B. from Brown, has been an advertising copywriter, a high school composition aide, and a Weight Watchers training supervisor. Her job at JVS was placing women who ranged from high school graduates to Ph.D's. She anticipates no problems working with men.

As for sex, race, and age discrimination in the law job market, Goldman says it is too early to tell whether they exist, but she will watch for, and attempt to cope with any such problems brought to her attention.

At JVS she was concerned with job search and job development, two functions

she hopes to try here.

Job development is specifically developing contacts that lead to a job for an applicant. A job search places the job seeker in a one to one interview, arranged by Goldman, with anyone in her field where she can get advice on where she, with her qualifications, would fit.

"Often these job search interviews end up in a job, but the primary purpose is informational and the interviews are more relaxed than a job interview."

"It could work here if someone could spare a half an hour to give students suggestions."

She hopes to involve alumni in the job search program, including those in smaller firms or solo practice who are not in a position to hire anyone but who have contacts within the bar associations or know of friends who are hiring.

Goldman confirmed what many C-M job seekers have discovered - the job market is tight.

"It's tight for any professional now," she said, "but if one is willing to wait a period of time to accept an

allied position, the situation doesn't appear to be too grim. But, she added, "I may be wrong. It's too soon for me to know."

Goldman said that the only downgrading she's heard of C-M is from the students, not from the community. "Most students tend to downgrade their own schools," she added, and doesn't see the school's image as a problem.

Although Goldman has no experience in law, she doesn't expect that to be a problem. "In the week that I've been here, I've done a tremendous amount of reading. And I'm learning from the students and from the professors."

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Curriculum Change

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examined and restructured.

Morse admits that the program she favors would cost from \$80,000 to \$100,000 a year. It includes hiring an Asst. Dean in charge of research and writing to administer the program, and 4 to 6 recent grads to handle research class and assist small groups and Institutes. Institutes would thus become upper level extensions of legal writing and would focus on original research.

Prof. Kellman felt that the Institute problem must currently be dealt with by reaching a temporary solution. Priority will be given to 3rd year students, which may necessitate the expansion of class sizes. Kellman is, however, "vehemently opposed to larger upper level classes."

With the second year class having approximately 100 more members than the third year class, the problem is bound to worsen. The budget remains an obstacle to long term solutions.

Prof. Barnhizer stressed the need for Crim. Law and Con Law to remain in the first year curriculum to provide values and a framework for the study of the legal profession. He advocates smaller first year classes, larger upper level classes.

BRIEFLY

Way to go Ellen

C-M's Ellen Feinberg was the runnerup in the recent CSU intramural racquetball tournament. She lost in the finals to Paula Pavlina, 15-9, 15-7. "It was close," she said, "but not as close as I would have liked it."

LSCRRC Project

Students interested in working this summer as a student intern with the Anti-Death Penalty Project of the Law Student Civil Rights Research Council (LSCRRC) and the National Lawyers Guild should contact either Joanne Gall or the NLG office. The project is funded by the Southern Poverty Law Center. The first group of students worked on cases in Florida, Georgia, Alabama, and Louisiana.

Students worked on writs of habeas corpus, pretrial motions, preparation for trials and community information. The Southern Poverty Law Center also has a catalogue of materials available to practitioners that they have used in their death penalty work.

Students may also contact the Ohio Anti-Death Penalty Coalition.

No Relief
In Sight

Informed sources say that librarian Anita Morse turned down an offer of bathrooms for the library because they would have to be removed when further construction begins two years from now. It looks like a typical case of budget over bladder.

A newspaper
is more than a doormat

David Douglass

"A free press is the unsleeping guardian
of every other right that free men prize . . ."

Sir Winston Churchill

Worth
Remembering

"You can't smile and think at
the same time."

Tom Landry

Dean Apologizes

Writers in the 60's used to get a lot of mileage out of the word 'dehumanizing', extending it to educational institutions as well as ghettos and prisons. There may be something to that. At a meeting of his Student Advisory group, the dean apologized for the "punitive and indifferent" face the faculty has shown students coming before them with petitions. Perhaps the grind of life does something to us all.

Professor Staff?

The front runner to fill the teaching slot for evening Business Associations, Winter and Spring Quarters, is Prof. Leiser. Those who believe in conspiracy theories will be disappointed however. The Administration had an agreement with two downtown lawyers to team teach it, but that fell through at the last minute. If Leiser surfaces in Jan., take heart. Student evaluations of his B.A. class last year were excellent. All nine of them.

*Merry Christmas
from the Gavel
Editors and staff*

Late Grades
Still Late....

Committee member Bill McGinty reports that the Ad hoc Committee on Late Grades (hereinafter referred to as the Late Committee) still has not met yet. The committee had been asked to meet at the faculty meeting of Oct. 19th. McGinty now finds himself among the many students without relief (see above). Perhaps he could ask one of Prof. Cohen's Labor Law students if this is an 8(a)5 violation of the duty to bargain in good faith?

Gidney Coming

Bill Gidney, whose artistry at the keyboard has made him a living legend in Northeast Ohio, will bring his duo to Cleveland State University Sunday, Dec. 10, at 4 p.m. for the third Sundown Jazz at CSU concert of the season. The monthly series in Main Classroom Auditorium, East 22nd St. and Euclid Ave., is free and open to the public.

Sorry, No Waivers

Those of you trying to slink out of here as easily as you can (and Prof. Browne knows who you are) lost another one the other day. The Curriculum Committee, after hemming and hawing over what to do with our Institute problem, took a head count and discovered that only 79 third and fourth year students have not taken Institutes. There are 169 places in Institute offerings Winter and Spring quarters. Juxtapose those facts and you get the news - there will be no waivers of the Institute requirement for graduating seniors.